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November 29, 2012

Ms. Marlene H. Dortch, Secretary  
Federal Communications Commission  
445 12th St, SW  
Washington, DC 20554

Re: MB Dkt. No. 09-182 – 2010 Quadrennial Regulatory Review – Review of  
the Commission's Broadcast Ownership Rules and Other Rules Adopted  
Pursuant to Section 202 of the Telecommunications Act of 1996; MB Dkt.  
No. 07-294 – Promoting Diversification of Ownership in the Broadcasting  
Services

Dear Ms. Dortch:

On November 27, 2012, the following persons met with Commissioner Ajit  
Pai and his Chief of Staff Mathew Berry to discuss concerns about the process  
and substance of the Commission's 2010 Quadrennial Review of broadcast  
ownership rules.

Angela J. Campbell and Victoria Ajayi, Georgetown Law Student Intern, of  
the Institute for Public Representation, counsel to the Office of  
Communication of the United Church of Christ, Inc., Media Alliance,  
National Organization for Women Foundation, Common Cause, Benton  
Foundation, Media Council Hawai'i, Communications Workers of America,  
and Prometheus Radio Project;

Andrew Schwartzman, Matthew Wood, and Lauren Wilson of Free Press;

Todd O'Boyle of Common Cause;

Michael Scurato of the National Hispanic Media Coalition;

\* Admitted to the Maryland bar only; DC bar membership pending. Practice supervised by members of the DC bar.

Corrine Yu of the Leadership Conference on Civil and Human Rights; and  
Terry O'Neill, President of the National Organization for Women.

All of the above public interest organizations have participated in the Commission's prior reviews of ownership limits and many were also involved in the appeals in *Prometheus I* and *II*. They expressed concern that the proposed draft order in the 2010 Quadrennial Rule would not comply with the Court's mandate to examine the impact of any decision to modify or retain an ownership rule on racial and gender diversity of station owners, and that it was arbitrary and capricious to the extent that it failed to provide for meaningful public notice when applicants sought waivers and failed to prevent stations from circumventing the local television limit by means of shared services agreements.

**Failure to address dearth of station ownership by people of color and women.**

Public Interest Organizations expressed frustration over the length of time it took to obtain basic information about the numbers of stations owned by women. They noted that the FCC had begun collecting information about the race and gender of stations in the late 1990s, but did not make this public for several years. Finally, when researchers were able to examine the data, they found that it was incomplete and unreliable. The FCC attempted to fix the problems with the data collection and required new forms to be filed in 2009. But, this new filing too was plagued with delays and problems with reliability of the data as well. Thus, it was not until November 14, 2012, that the Media Bureau issued a report summarizing the ownership data for 2009 as well as 2011. This was the same date on which the draft order proposing to relax some of the ownership limits was circulated.

Public Interest Organizations were surprised that the Commission planned to complete the 2010 Quadrennial review without considering this new data. They asked for the Commission to afford the public the opportunity to analyze the Bureau's data to assess how the proposals to modify and or retain the current ownership limits would affect ownership opportunities for women and people of color. For example, the report shows that there are a total of 48 full power minority owned stations. Of the 48, 19 are in top 20 DMAs and none of those is a top 4 ranked station.<sup>1</sup> Thus, those stations are uniquely vulnerable to acquisition if the NBCO rule is relaxed as has been proposed.

Public Interest Organizations expressed additional concern that the upcoming incentive auctions would result in a decrease in the number of

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<sup>1</sup> This figures are from the attachment to an *ex parte* filing in this same docket by the Free Press and others on November 23, 2012.

television stations on the air. The very same stations that were vulnerable to acquisition if the rules were relaxed also would have incentives to give up their spectrum in exchange for a portion of the auction proceeds.

Public Interest Organizations also observed that the Bureau Report showed very low levels of ownership of radio stations by women and people of color. For example, of total commercial FM stations, only 5.8% are controlled by women, 2.7% by Hispanics and 3.5% of all other minority groups. These low levels are troubling because radio, which is more affordable than television, has traditionally provided a means for new entry. If the radio-television and radio-newspaper cross ownership rules are relaxed, stand-alone stations will be bought out and stand-alone stations are likely to be minority and women owned. In addition, relaxing cross-ownership rules will create additional barriers to entry and encourage further consolidation of ownership.

Public Interest Organizations noted that the Commission's failure to analyze the data and determine how its proposed rules would affect ownership by women and people of color would likely result in another remand by the Third Circuit panel which had retained jurisdiction. They provided copies (attached) of a portion of the transcript of the oral argument in *Prometheus II* in which the court questioned FCC counsel about the extent to which it had considered the impact of relaxing its rules on ownership diversity and made clear its expectation that the Commission would properly analyze diversity data in the 2010 review. They noted that it appeared that the Commission was poised to make the same mistakes it made in the 2006 Quadrennial Review.

### **Adequate Public Notice of Waivers**

Public Interest Organizations also stressed that the Commission must ensure that the public has meaningful public notice when broadcaster request waivers of the ownership rules. Although FCC rules require that stations make public announcements when they file renewal or transfer applications, the rules do not currently specify that the applicant inform the public that it is seeking a waiver. Nor does the FCC's public notice indicate when applicants request waivers. To demonstrate this point, they showed the 59 page "Public Notice" of Broadcast Applications from December 10, 2004, which listed several applications accepted for filing, including several from Media General for television stations renewals on page 31.<sup>2</sup> Despite the fact that one of those applications for a television station in Columbus, GA that could not be granted in the absence of a waiver of the NBCO rule, and Media General included a

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<sup>2</sup> A copy is attached to this letter. In addition, the relevant page was included as Appendix B to the Citizens Petitioners Brief in *Prometheus II*.

request for waiver of that rule, the public notice said nothing about the fact that Media General had requested a waivers of the NBCO rule.

Public Interest Organizations further pointed out that even after the Commission granted Media General permanent waivers of the NBCO rule, Media General recently sold off most of its newspapers separately from its broadcast stations. This suggests that the claimed efficiencies and synergies from cross-ownership have been overstated and that relaxing the NBCO rules will do nothing to save failing newspapers.

### **Attribution of Shared Services**

Public Interest Organizations also expressed concern over shared service agreements. For example, in Honolulu, three stations – including the CBS and NBC affiliates -- are jointly operated from the same studio and air the same local news.

While Public Interest Organizations support the proposal to attribute joint sales agreements (JSAs) among television just as JSAs among radio stations are currently attributed, that proposal does not go far enough. They noted that reason for attributing JSAs involving more than 15% of advertising was that one station could exercise too much influence over the programming of another station. However, where one television station manages another television station in the same market and/or produces the local news programming for another station, it directly decides what programming that other station will air. Even if local news amounts to less than 15% of the total programming, it may be the only news and locally produced programming on that station. Thus, shared services agreements allows stations, especially in mid-size to smaller markets, to get around the local television limits and reduce competition, diversity and localism.

Public Interest Organizations also noted that there was broad public interest and concern about media consolidation and the lack of minority and women's voices. They noted that the only hearings on media ownership were held several years ago. The public would like to opportunity to weigh in now that the Commission's proposals had become more focused.

In sum, rather than rushing to put out an order in the 2010 Quadrennial Review that will not satisfy the court or stakeholders, the Commission should allow time to address the implications of the Bureau's ownership report and the impact of spectrum auctions.

Please contact me with any questions.

Respectfully submitted,

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cc (via email):  
Commission Ajit Pai  
Matthew Berry